

DEPT. OF TRANSPORTATION
DOCKETS

January 18, 2008

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Ms. Nicole R. Nason
Administrator
National Highway Traffic Safety Administration (NHTSA)
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Docket ID: NHTSA-2007-0040

Action: *Joint Petition for Reconsideration; Federal Motor Vehicle Safety Standard (FMVSS) No. 110; Vehicle Capacity Weight and Tire Information*

Dear Administrator Nason:

The undersigned signatory organizations petition the National Highway Traffic Safety Administration (NHTSA) to address the following with respect to FMVSS 110 (49 CFR §571.110), as modified by the final Cargo Carrying Capacity (CCC) rule issued late last year. 72 Fed. Reg. 68442, *et seq.* (December 4, 2007). Specifically, Petitioners respectfully request that:

1. NHTSA clarify further that the FMVSS 110 tire information relabeling mandate in 49 CFR § 571.110 S4.3.2. and S10 only applies to *altered* light-duty vehicles;
2. The CCC relabeling trigger threshold required by 49 CFR §571.110 S10 be set at the *greater* of 3 percent of GVWR or 100 kg (220 lb.); and
3. NHTSA restore the version of 49 CFR §571.110 S4.3(d) published in 2002.

The following evidence and arguments are offered in support of the above-requested actions. Questions may be directed to the undersigned individuals.

Respectfully Submitted,

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Signatory Organizations

Automotive Service Association
Marine Retailers Association of America
National Automobile Dealers Association
National Marine Manufacturers Association
National RV Dealer's Association
National Truck Equipment Association
Specialty Equipment Market Association
Tire Industry Association

cc: Mr. Stephen Kratzke
Associate Administrator for Rulemaking U

PETITION FOR RECONSIDERATION

DOT Docket No. NHTSA-2007-0040
Final Rule
Federal Motor Vehicle Safety Standards
Cargo Carrying Capacity

Introduction

The following petition makes three requests intended to clarify how FMVSS No. 110 applies to industry and to refocus attention on the TREAD Act goal of seeking means to compel motorists to check their tire pressure and understand their vehicle's cargo capacity limits. As the agency is aware, this mission remains a challenge despite decades of efforts by the auto industry and regulators to educate the public. The Petition seeks to uphold the challenge articulated in the TREAD Act and away from issues that divert time and resources from the goal of increasing highway safety.

I. NHTSA SHOULD CLARIFY FURTHER THAT THE FMVSS 110 TIRE INFORMATION RELABELING MANDATE IN 49 CFR § 571.110 S4.3.2. AND S10 ONLY APPLIES TO *ALTERED* LIGHT-DUTY VEHICLES.

A. **Overview:** Petitioners request that NHTSA clarify further that the FMVSS 110 tire information relabeling mandate in 49 CFR § 571.110 S4.3.2. and S10 only applies to *altered* light-duty vehicles. In support, Petitioners urge the agency to consider that:

- (1) applying a replacarding burden on “dealers”¹ customizing but not “altering” vehicles undermines NHTSA’s well-established definition of “alterer”² and imposes an unnecessary burden on vehicle dealers and installers;
- (2) limiting the replacarding mandate will help to properly focus on the safety value of educating the motoring public on the importance of maintaining proper tire inflation and properly loading cargo on vehicles; and
- (3) the Agency has the discretion to so limit the tire information replacarding mandate.

¹ NHTSA’s use of the term “dealer” appears to mean anyone performing operations on a vehicle between final vehicle certification and first retail sale of the vehicle

² “*Alterer*” means a person who alters by addition, substitution, or removal of components (other than readily attachable components) a certified vehicle before the first purchase of the vehicle other than for resale. 49 CFR §567.3.

- B. **Regulatory Background:** In 2002, in response to Section 11 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act,³ NHTSA issued a rule standardizing the location and format of the tire label that FMVSS 110 had long required manufacturers to install on light-duty vehicles. 67 Fed. Reg. 69599, *et seq.* (November 18, 2002). Manufacturers must now attach a label or placard on the driver's side B-pillar, the driver's side door, or otherwise near the driver's seating position (for vehicles with driver seating positions) for all vehicles with a GVWR of 10,000 lbs. or less. 49 CFR §571.110 S4.3. Notably, the November 2002 rule suggested a legal mandate and safety justification for the replacarding of completed vehicles prior to first sale, but only for vehicle "alterers." 67 Fed. Reg. at 69618.

In 2004, NHTSA issued a second rule which, among other things, attempted to require dealers to revise the FMVSS 110 tire placard whenever the tire size changed on completed light-duty vehicles prior to first sale. 69 Fed. Reg. 31306, *et seq.* (June 3, 2004). In support of this position, NHTSA cited to 49 USC § 30112, which prohibits a person from selling a noncompliant motor vehicle or item of motor vehicle equipment, and to the 49 USC §30122 "make inoperative" prohibition. 49 CFR §571.110 S 4.3(d); 69 Fed. Reg. at 31311. In an April 7, 2006, letter of interpretation, NHTSA later clarified that replacarding is not required if light-duty vehicles are modified after first retail sale in a manner that changes their tire size, cold inflation pressure, and/or cargo capacity rating.

- C. **Vehicle Parts and Accessories:** It is useful to understand how light-duty vehicles are customized prior to first retail sale. In addition to typically having several factory option packages to choose from, light-duty vehicle customers often have factory and aftermarket parts and accessories installed on or in their new vehicles. This customization typically occurs at new vehicle dealerships or at off-site aftermarket installers. Occasionally, more than one installer may work on a vehicle (e.g., one for a sunroof and another for a hitch and grille guard). Each vehicle is different, and there are endless accessory variables. Given these circumstances, tracking and totaling the weights of multiple components – 5, 10, 45 pounds – can prove challenging.
- D. **Alterations:** For decades, dealers and installers have worked within a regulatory environment that distinguishes between minor and more substantial changes that trigger alteration certification. The regulated community has devoted considerable resources on outreach focused on compliance responsibilities associated with "altered

³ SEC. 11. Improved Tire Information.

(a) Tire Labeling. Directs the Secretary to initiate rulemaking, within 30 days of enactment, to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a recall, and to complete the rulemaking no later than June 1, 2002.

(b) Inflation Levels and Load Limits. In the rulemaking above for tire labeling, the Secretary may take whatever additional action is appropriate to ensure that the public is aware of the importance of observing tire load limits and maintaining proper tire inflation levels for safe operation. The additional action may include a requirement that the manufacturer of motor vehicles provide the purchasers of the motor vehicles information on appropriate tire inflation levels and load limits if the Secretary determines that requiring such manufacturers to provide this information is the most appropriate way the information can be provided.

vehicles.”⁴ This is a never-ending effort given that there are always new companies and workers to bring up to speed. Of course, the key issue has always been that “altered vehicles” do not involve the installation of readily attachable components, including tires. The CCC rule appropriately appears to impose a replacarding mandate only with respect to “altered vehicles.” 49 CFR §571.110 S4.3.2 and S10. Petitioners request that NHTSA verify this reading of FMVSS 110 by making a simple, conforming regulatory amendment. Specifically, Petitioners request that 49 CFR §571.110 S10.1 be amended to read “....*on the placard required by S4.3.2 or S4.3.5 and....*” This will indicate unequivocally that the tire information replacarding mandate only is triggered with respect to altered vehicles, thus enabling the regulated community to recognize clearly that they need only, but must, evaluate whether to relabel the tire information label pursuant to 49 CFR §571.110 S4.3.2 and S10, if and when they are required to add an alteration label pursuant to 49 CFR Part 567.

E. **Nothing in Section 11 of the TREAD Act nor in 49 USC §§ 30112 or 30122 Constrains NHTSA’s Discretion to Clarify the Application of the FMVSS 110 Relabeling Requirements:**

Petitioners urge NHTSA to recognize its discretion in this regard. NHTSA has a long history of interpreting the nature and scope of Sections 30112 and 30122 when evaluating changes to completed vehicles before first sale, and that the clarification Petitioners are requesting herein by no means runs afoul of these statutory provisions. In addition, a plain reading of Section 11 of the TREAD Act indicates that NHTSA has broad discretion with respect to how it crafts its tire information rule. Moreover, Section 11 clearly indicates Congress’ intent that the public be educated on the importance of proper tire loading and inflation. Clearly, the objective should be to provide consumers with tangible and useful tire safety information. A well designed rule should avoid any focus on de minimis cargo carrying capacity changes or on consumer requested tire changes as they distract from that important objective. Instead, resources should be devoted to educating customers and motorists regarding proper vehicle loading and tire inflation techniques.

Since the motoring public typically has no practical means of calculating the weight of the cargo they load into and onto their vehicles, an exact cargo carrying capacity number is of limited, if any, utility to them. Fortunately, in most driving situations, light-duty vehicles rarely are loaded above the CCC limit and thus overloading is not an issue. On the other hand, occasionally the CCC limit may come into play, such as during a family vacation or move. In such situations where passengers and luggage may be loaded excessively or improperly, motorists historically do not weigh and tally up the cargo and passengers they are loading. In addition to language in light-duty vehicle owners’ manuals, educational outreach should be considered with the aim of improving the motoring public’s focus on the safety benefits of proper vehicle loading.

⁴ “Altered vehicle” means a completed vehicle previously certified in accordance with § 567.4 or § 567.5 that has been altered other than by the addition, substitution, or removal of readily attachable components, such as mirrors or tire and rim assemblies, or by minor finishing operations such as painting, before the first purchase of the vehicle other than for resale, in such a manner as may affect the conformity of the vehicle with one or more Federal Motor Vehicle Safety Standard(s) or the validity of the vehicle’s stated weight ratings or vehicle type classification.

Importantly, there are a several variables that may play as much or more of a safety role than cargo weight. Proper distribution of the weight within the vehicle is important. For example, the weight of a roof rack is inconsequential when compared with how much weight someone may load or overload on it, as one or two hundred pounds or more can directly impact a vehicle's center of gravity. Conversely, tubular steps and other items of equipment that ride lower to the ground may actually increase a vehicle's stability and therefore provide a net safety benefit. Petitioners look forward to working with NHTSA on additional educational outreach in this regard.

II. REQUEST TO ESTABLISH A 220 POUND TRIGGER THRESHOLD FOR CARGO CARRYING CAPACITY RELABELING

- A. **Overview:** Recognizing that it is impractical and unnecessary to update the CCC label every time an item of equipment is added to light-duty vehicles by vehicle alterers, NHTSA has established a minimum weight trigger threshold above which CCC label information must be updated. 49 CFR § 571.110 S10. After initially suggesting relabeling threshold equal to or less than 0.5 percent of GVWR (e.g., 15 pounds on a 3,000 pound vehicle), the December 2007 rule was issued with a trigger threshold of the *lesser* of 1.5 percent of GVWR or 45.4 kg (100 pounds). 70 Fed. Reg. 51707 (August 31, 2005); 72 Fed. Reg. at 68452. This latest threshold translates into 45 pounds for a 3,000 pound vehicle. Importantly, Petitioners had argued for a minimum trigger threshold of 3 percent of GVWR or 100 kg (220 lb), whichever is *greater*.

As follow, Petitioners respectfully urge NHTSA to reconsider its minimum trigger threshold. Note that where the discussion below periodically references "220 pounds," in all cases that reference means "the *greater* of 3 percent GVWR or 100 kg (220 lb)."

- B. **NHTSA Misstates The Consensus For A 220 Pound Threshold:** In its December 2007 final rule, NHTSA acknowledged that it had "*received comments from numerous sources arguing that the proposed 0.5 percent GVWR threshold for relabeling requirements to be triggered was too low. Most commenters suggested that the threshold be the lesser of 3 percent GVWR or 100 kg (220 lb). This suggested threshold was based on the 49 CFR 595.7 threshold afforded to those who modify vehicles to accommodate persons with disabilities.*" 72 Fed. Reg. at 68452. Contrary to that reference, Petitioner commenters had urged NHTSA to adopt a relabeling threshold of the *greater* of 3 percent GVWR or 100 kg (220 lb), not the *lesser*.
- C. **When "100 Pounds" Actually Means 45 Pounds:** By urging the adoption of the *greater* of 220 lbs. or 3% of GVWR, Petitioners had envisioned a single minimum safe harbor: 220 lbs. Dealers and installers working on heavier vehicles would be free to calculate potentially higher safe harbors (e.g., 3% of 10,000 pounds or 300 pounds). This position was crafted to be consistent with 49 CFR 595.7, which contains a relabeling trigger for "*any reduction in the load carrying capacity of the vehicle of more than 100 kg (220 lb) after the modifications are completed.*" For reasons unexplained, NHTSA's final rule sets the *lesser* of *lesser* of 1.5 percent of GVWR or 45.4 kg (100 pounds). As a practical matter, for most light-duty vehicles this would

unnecessarily burden dealers with having to calculate a percentage of GVWR, and would only provide for a 100 pound trigger threshold for vehicles above 6,666 pounds.

- D. **No Support Data For 100 Pound Threshold:** The rulemaking record contains no data supporting NHTSA's decision to create a 100 pound trigger threshold. Instead, the final rule simply makes the unsupported assertion that "*The most commonly installed heavy item by dealers before first retail sale is a heavy duty Class IV trailer hitch for a pickup truck. Such hitches have an advertised shipping weight of less than 36.3 kg (80 lbs).*" 72 Fed. Reg. at 68452. Conversely, the docket contains several documents supporting a higher weight threshold. For example, in its March 17, 2006 comments, the Association of International Automobile Manufacturers, Inc (AIAM) lists the weights of a variety of items potentially installed prior to first retail sale. NHTSA-2005-22242-23. Among other notable items, AIAM's comments provided data on a number of hitches, but none matching the trailer hitch weighing 36.3 kg (80 lbs) NHTSA references as "*the most commonly installed heavy item by dealers prior to first retail sale.*" 72 Fed. Reg. at 68452.
- E. **100 Pounds Provides No Meaningful Relief:** In its December 2007 rule, NHTSA states that "*We believe the threshold for added equipment weight of the lesser of 1.5 percent of GVWR or 100 pounds relieves passenger vehicle dealers of the responsibility for label changes in the vast majority of equipment sales without creating a practical safety problem.*" 72 Fed. Reg. at 68452. Petitioners do not agree. For example, AIAM's March 17, 2006 comments illustrate both how the originally proposed limit of 0.5% GVWR easily could be exceeded by common dealer-installed accessories and how a 100 pound trigger threshold would not provide much additional relief. While automakers frequently offer factory-installed package options (e.g., tow packages, tonneau covers, moon/sun roofs, sport accessory packages, etc.) the weight of such packages will be reflected in the original tire label cargo capacity rating. Of course, as described above, dealerships and installers often further accessorize vehicles before first sale, often bundling groups of accessories in appearance or towing packages. A customer who has a trailer hitch installed likely will have other items attached to the vehicle, such as a roof rack, fender flares and/or grille guard.

A careful review of common accessory lists shows that these combinations frequently exceed 100 pounds, but fall below 220 pounds, demonstrating a clear rationale for a minimum 220 pound threshold. The following are examples of common packages:

Hummer H2 (with factory-installed tow package)

- Tubular Steps – 57.2
- Dual Headrest DVD – 9.2
- Roof Rack – 24.1
- Kayak Carrier – 11.0
- Remote engine starter – 3.0
- Total – 104

Chevy Tahoe (with factory-installed tow package)

- Splash Guards – 1.4
- Tubular Steps – 57.2
- Brush Guard – 31.2

- DVD Player – 9.2
- All weather mats – 12.0
- Total – 111

Nissan Titan (with factory-installed tow package)

- Rear bumper step – 28.0
- Under seat storage – 6.6
- Bed Divider – 12.06
- Hard Tonneau Cover – 73.5
- Bed extender – 13.0
- Brush guard – 31.2
- Skid plates – 9.0
- Total – 173.36

Cadillac CTS

- Splash guards – 1.4
- All-weather mats – 12.0
- Spoiler – 7.0
- Side-window deflector- 2.4
- Receiver hitch – 43.3
- Remote engine starter – 3.0
- Total – 69.1

Subaru Outback

- Front license plate – 1.1
- Receiver hitch – 43.3
- Cargo organizer – 4.0
- All-weather mats – 12.0
- Splash guards – 1.4
- Roof rack – 24.1
- Roof mount bike – 13.1
- Kayak carrier – 11.0
- Remote starter – 3.0
- Total - 113

- F. **No Demonstrated Safety Justification for a 100 Pound Trigger Threshold:** While dealers and other installers have accessorized vehicles since automobiles were first sold, the docket nowhere cites to and Petitioners are unaware of any overloading-related safety concerns associated with properly installed accessories. Importantly, the National Traffic and Motor Vehicle Safety Act of 1966 requires NHTSA to prescribe motor vehicle safety standards that are practicable, that meet the need for motor vehicle safety, and that can be stated in objective terms. 49 U.S.C. §30111. Petitioners contend that a standard that contains an arbitrary 100 pound trigger threshold does not provide for an objectively-based standard that is practicable and that meets safety needs.

NHTSA notes in its December 2007 final rule that “*A vehicle with the maximum weight of added equipment of 1.5 percent of GVWR when also loaded to the maximum weight of passengers and cargo specified in the original label could exceed the tire load rating by 1.5 percent as a worst case. However, NHTSA tire research (for example, Docket NHTSA 2000-8011 item 22) shows that fully inflated tires are not very sensitive to small overloads. Even in a high speed test rigorous enough to fail a third of the tire samples, tires that were slightly overloaded (taking into consideration the curvature of the test wheel) performed comparably to a sample of the same tire make/models with 10 percent less load.*” 72 Fed. Reg. at 68452. Petitioners submit that this rationale also applies to a

220 pound minimum trigger threshold. Again, the Act clearly requires a safety basis for establishing standards, yet nothing in the record supports a threshold below 220 pounds.

- G. **An Existing NHTSA Regulation Uses a 220 Pound Trigger Threshold (49 CFR 595.7)**: The rulemaking record contains several comments referring to the 100 kg (220 lb) trigger threshold set out in NHTSA's rule governing the modification of vehicles to accommodate persons with disabilities. 49 CFR 595.7. Curiously, NHTSA failed to indicate in the final CCC rule why it was diverging from this relevant and logical precedent. Simply put, if a 220 pound trigger threshold provides a level of safety for persons with disabilities, it should serve well for the motoring public generally.
- H. **Conclusion**: The rulemaking docket is replete with uncontroverted and compelling support for a minimum 220 pound trigger threshold. Conversely, NHTSA failed to provide any reasonable justification for the final rule's "lesser of 1.5 percent GVWR or 45.4 kg (100 pounds)" limit. Therefore, Petitioners respectfully request that NHTSA reconsider and revise the final CCC rule to establish a relabeling trigger threshold of *the greater of 3 percent GVWR or 100 kg (220 lb)*. Specifically, 49 CFR §571.110 S10.1 should be amended to read as follows:

"S10.1 If weight exceeding the greater of 3 percent GVWR or 100 kg (220 lb) is added to a vehicle between final vehicle certification and first retail sale of the vehicle, the vehicle capacity weight values on the placard required by S4.3.2 or S4.3.5 and the load carrying capacity weight values on the RV load capacity labels (Figures 3 and 4) required by S9.3 must be corrected using one or a combination of the following methods:"

III. NHTSA SHOULD RESTORE 49 CFR §571.110 S4.3(d) TO THE VERSION OF PUBLISHED IN 2002.

A. Petitioners' Specific Recommendation

NHTSA's 2002 final rule tire information rule contained the following language with regard to the new label's tire size information:

(d) Tire size designation, indicated by the headings "original tire size" or "original size," for the tires installed *as original equipment on the vehicle by the vehicle manufacturer*.

67 Fed. Reg. at 69623; 49 CFR §571.110S4.3(d).

In 2004, NHTSA changed this provision to read:

d) Tire size designation, indicated by the headings "original tire size" or "original size," and "spare tire" or "spare," for the tires installed *at the time of the first purchase for purposes other than resale*.

69 Fed. Reg. at 31317; 49 CFR §571.110S4.3(d).

While supportive of the language referencing spare tires, Petitioners object to NHTSA's substitution of *at the time of the first purchase for purposes other than resale* for *as*

original equipment on the vehicle by the vehicle manufacturer. While dealers and installers sometimes replace tires on completed light-duty vehicles with tires of a different size, such changes typically involve a size option recommended by the original vehicle manufacturer. Moreover, customers typically are aware of the new tire size as they are the ones ordering the change. Lastly, NHTSA nowhere has shown any safety concern associated with the installation of replacement tires on new vehicles prior to first sale. Given these facts, the burden associated with having to relabel a vehicle whenever replacement tires of a different size are installed prior to first sale outweighs any benefit associated with doing so. Therefore, Petitioners urge NHTSA to amend 49 CFR §571.110S4.3(d) so that it once again reads *as original equipment on the vehicle by the vehicle manufacturer.*

B. Additional Outreach Regarding Proper Tire Inflation

While many motorists are disciplined about the need to properly and periodically check the air in their tires, few may understand the importance of doing so to accommodate extra loads. Petitioners look forward to working with NHTSA and with other key stakeholders to engage in ongoing educational outreach on this important issue.